

## ***5 Official Opinions of the Compliance Board 1 (2006)***

**COMPLIANCE BOARD – AUTHORITY AND  
PROCEDURES – UNTIMELY RESPONSE BY PUBLIC  
BODY, HELD TO BE A VIOLATION - NOTICE  
REQUIREMENTS – FAILURE TO PROVIDE NOTICE,  
HELD TO BE A VIOLATION – MINUTES – NOT  
REQUIRED FOLLOWING SESSION AT WHICH QUORUM  
WAS NOT CONVENED**

January 26, 2006

*Mr. Daithi Htun*

The Open Meetings Compliance Board has considered your complaint that the Mayor and Council of Capitol Heights have violated the requirements of the Open Meetings Act related to the posting of meeting notices and the keeping of minutes. Specifically, the complaint alleged that the Mayor and Council failed to provide proper notice of meetings on July 13 and 18, 2005, and have not prepared minutes for those meetings.<sup>1</sup> For the reasons stated below, the Compliance Board concludes as follows: Assuming, as we do, that a meeting was called for July 13, the failure to provide notice violated the Act. So did Capitol Heights' failure to respond to the complaint in a timely way. We find no violation with regard to the complaint's other Open Meetings Act allegations.<sup>2</sup>

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<sup>1</sup> The complaint mentioned in passing an alleged failure to prepare minutes for a meeting on July 11, 2005, but also observed that no quorum was present after three council members left prior to the actual conduct of business. The lack of a quorum obviated any requirement for minutes. *See* Part IV below.

<sup>2</sup> The complaint also contained an account of alleged violations of the Town Charter and of Robert's Rules of Order, said to be incorporated by the Charter. It also discussed actions that were said to be unlawful because they were taken at meetings without a proper quorum or failed to meet criteria in the Town's Personnel Manual. The complaint further identified an alleged lack of responsiveness to a request for records under the Maryland Public Information Act. These allegations do not involve an interpretation of the Open Meetings Act, which is the only basis on which we can consider a complaint. We express no views on any of these allegations.

**I**

**Complaint, Response, and Third-Party Submission**

**A. *Complaint***

According to the complaint, this was the sequence of events on July 13, 2005:

Mayor Nixon called for a meeting at 7:00 p.m. that night. The meeting was not properly posted to the public, despite the fact that Mayor Nixon was in the office that day until approximately 3:00 p.m. and had at that time or earlier called a meeting for that evening to start at 7:00 p.m. No meeting notice was posted on the Town Hall door. Nor did she instruct any of the Town's employees, who were present the entire day, to post any sign until sometime after 6:25 p.m. at the earliest. I was present at the Town Hall until that time and can attest that no sign had been posted when I left (Mayor Nixon had not informed me of any meeting or to post a sign).<sup>3</sup>

At the appointed hour for the meeting, the complaint continued, only Mayor Nixon and two council members were present, which fell short of a quorum.<sup>4</sup> The complaint appended a print-out of a newspaper article dated July 14, in which the reporter quoted the Town Attorney as indicating that, in addition to the Mayor and two council members physically present, two other council members had participated via speaker phone. The complaint, however, characterized this as "incorrect." Neither of the two other council members had participated in a conference call or other simultaneous discussion during the session. Consequently, according to the complaint, "there was no quorum simultaneously present, and no vote or official action could be legally taken." The complaint went on to allege, with respect to the July 13 meeting, "there are no minutes or recordings to verify what occurred. I have requested copies from the Town, but have received no response whatsoever. The Town and Council are required to make and keep minutes detailing the date and time of the meeting, who was present, and any actions that were taken, including exact wording of any motions. This has not been done, despite [the fact] subsequent meetings have had minutes already approved ...."

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<sup>3</sup> The complainant was the Town Administrator at the time. The posting of notice presumably would have been a task that the Town Administrator might have been asked to carry out. Of course, legal responsibility for compliance with the Act's notice requirements rests with the public body, not an employee.

<sup>4</sup> Under Section 209 of the Town Charter, the presence of four council members and the Mayor is necessary for a quorum.

The Open Meetings Act allegations with respect to the meeting of July 18 are likewise that notice was not properly posted and minutes were not prepared. The complaint contained no detail about the alleged failure to post notice properly. As to the failure to prepare minutes, the complaint alleged that “there is no record of who was present, or any vote, and Town officials and staff have not responded to requests ... [for] roll call forms, speaker forms, or any other type of recording who was present and what type of actions were taken, or motions made ....”

***B. Response***

The response on behalf of the Mayor and Council took the form of a letter on December 20, 2005, from Mayor Nixon.<sup>5</sup> The response indicated that “no meeting [was] scheduled for or held on July 13 since it is a Wednesday. All Town meetings are held on Mondays.” With respect to the meeting on July 18, the response stated that proper notice of the meetings was posted. Minutes were enclosed for an executive session on July 18. The response also enclosed “the report of events occurring on July 18, 2005, at the public session.”

More generally, the response stated that the Mayor and Council have made “every effort to comply with the Open Meetings Act in spite of all the turmoil in which we were engulfed at that time. We take very seriously our responsibility to comply with the laws of the State of Maryland ....”

***C. Third-Party Submission***

By letter of January 7, 2006, Councilwoman Evelyn Grimes informed the Compliance Board that “on July 13<sup>th</sup> a meeting was called to discuss” an altercation that had occurred earlier that day. No quorum actually assembled, however. Likewise, “on July 18<sup>th</sup> a personnel meeting was called,” but a quorum was not present. More generally, Councilwoman Grimes asserted that meetings during the period July 13 to August 1, 2005 “were arranged by one of the secretaries calling us at the last minute. Therefore, it was virtually impossible for the citizens to have adequate notice of these meetings.” Finally, Councilwoman Grimes alleged that the meeting notices provided with Mayor Nixon’s response “all appear to be forged copies.”

**II**

**Untimely Response**

On August 29, 2005, the Compliance Board sent the complaint to Mayor Nixon. Assuming normal mail delivery times, the Compliance Board’s letter and enclosure should have been received no later than September 1. The Town had an obligation to file its response within 30 days of its receipt of the complaint, or

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<sup>5</sup> The untimely nature of the Town’s response is discussed in Part II below.

around October 1. In fact, the Town responded by letter of December 20, 2005, and only after a specific request from the Compliance Board. The letter from Mayor Nixon blamed miscommunication with the Town Attorney for the delay: “We thought our Town Attorney was handling [the] response.”

Whatever the Town’s expectation about the handling of the matter, it had a responsibility to comply with the statutory obligation to file a timely response. §10-502.5(c)(3).<sup>6</sup> Its failure to do so was a violation.

### **III**

#### **Notice Issues**

##### ***A. July 13, 2005***

The complaint alleged, in some detail, that a meeting was scheduled by Mayor Nixon sometime during the day on Wednesday, July 13, to be held at 7:00 p.m. This aspect of the complaint is corroborated by a newspaper story appended to the complaint, evidently from the *Gazette*, reporting a closed-door meeting “to discuss personnel and legal issues related to an incident earlier that day between two Town employees”; by an earlier story in the *Gazette*, which we located on the Internet, reporting that “[Mayor] Nixon called for an emergency Town Council meeting ... to discuss the matter”; and by Councilwoman Grimes’s letter to us. By contrast, Mayor Nixon’s response states flatly that, “there was no meeting scheduled for or held on July 13 since it is a Wednesday. All Town meetings are held on Mondays.”

The Compliance Board is not a fact-finding body and cannot ultimately resolve this bizarre factual dispute. The weight of the available evidence however, is that a meeting was called. If, indeed, the Mayor or anyone else authorized to convene a meeting acted to do so for the evening of July 13, then prompt notice to the public should have been provided. §10-506. This is so even if fewer than a quorum of council members actually attended. The failure of a quorum cannot be assumed and, if it occurs, does not excuse a public body from the Act’s notice requirements. *See 3 Official Opinions of the Open Meetings Compliance Board* 314 (Op. No. 03-13).<sup>7</sup>

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<sup>6</sup> All statutory references, unless otherwise indicated, are to the State Government Article, Annotated Code of Maryland.

<sup>7</sup> This opinion, we note, concerned Capitol Heights itself.

***B. July 18***

The complaint asserted, without supporting detail, that the meeting on July 18 was “not properly posted to the public.” In her response, Mayor Nixon asserted that proper notice had been posted. She provided copy of the written notice, which contained the elements required under §10-506(b). If this notice was posted at reasonable time in advance of the July 18 meeting at a place known to the public as the location for such notices, there was no violation.<sup>8</sup>

**IV**

**Minutes**

***A. July 13***

We have discussed the issue of whether any gathering occurred at all on July 13. Assuming one did, nevertheless the complaint indicated that a quorum was not present. If there was no quorum, then there was no meeting. *See* 10-502(g). Because the obligation to prepare minutes arises only “after a public body *meets*,” §10-509(b), the lack of a quorum on July 13 means that no minutes were required. There was no violation in this regard.

***B. July 18***

The complaint alleged that no documentation of those present on July 18 or the actions taken was provided when requested. From this, the complainant inferred that the required minutes do not exist. The Mayor’s response included minutes from the “executive session” on July 18 and what the response described as a “report of events occurring ... at the public session” on that date.

The closed “executive” session minutes contained all of the elements required by §10-509(c)(1): each item considered, any action taken, and each recorded vote. There was no violation with respect to these minutes.

The document labeled “public session minutes” for July 18 consists essentially of a record of the fact that a quorum of the Council was not present. The document recorded who was present but, given the absence of a quorum, stated that “no meeting occurred and no items of business were considered.” Given no “meeting,” the requirements in §10-509 were inapplicable to the public session, and there was no violation.

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<sup>8</sup> We are in no position to comment on Councilwoman Grimes’ allegation that the notice was a forged copy.

**IV**

**Conclusion**

In summary, the Open Meetings Compliance Board finds that notice should have been given for the meeting apparently called on July 13. Notice of the July 18 meeting appears to be adequate, as are the minutes for the closed meeting on that date. Because a quorum did not attend either the intended July 13 session or the open session on July 18, minutes were not required. Finally, the Mayor and Council violated the Act by their tardy response to the complaint.

OPEN MEETINGS COMPLIANCE BOARD

*Walter Sondheim, Jr.*  
*Courtney J. McKeldin*  
*Tyler G. Webb*